

## § 137.142

§ 137.140 not more than 45 days after receipt of a final offer, or within a longer time period as agreed by the Self-Governance Tribe consistent with this subpart.

### **§ 137.142 What is a “significant danger” or “risk” to the public health?**

A significant danger or risk is determined on a case-by-case basis in accordance with section 507(c) of the Act [25 U.S.C. 458aaa-6(c)].

### **§ 137.143 How is the funding level to which the Indian Tribe is entitled determined?**

The Secretary must provide funds under a funding agreement in an amount equal to the amount that the Indian Tribe would have been entitled to receive under self-determination contracts under this Act, including amounts for direct program costs specified under section 106(a)(1) of the Act [25 U.S.C. 450j-1(a)(1)] and amounts for contract support costs specified under section 106(a) (2), (3), (5), and (6) of the Act [25 U.S.C. 450j-1(a)(2), (3), (5) and (6)], including any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian Tribe or its members, all without regard to the organizational level within the Department where such functions are carried out.

### **§ 137.144 Is technical assistance available to an Indian Tribe to avoid rejection of a final offer?**

Yes, upon receiving a final offer, the Secretary must offer any necessary technical assistance, and must share all relevant information with the Indian Tribe in order to avoid rejection of a final offer.

### **§ 137.145 If the Secretary rejects a final offer, is the Secretary required to provide the Indian Tribe with technical assistance?**

Yes, the Secretary must offer and, if requested by the Indian Tribe, provide additional technical assistance to overcome the stated grounds for rejection.

## 42 CFR Ch. I (10–1–06 Edition)

### **§ 137.146 If the Secretary rejects all or part of a final offer, is the Indian Tribe entitled to an appeal?**

Yes, the Indian Tribe is entitled to appeal the decision of the Secretary, with an agency hearing on the record, and the right to engage in full discovery relevant to any issue raised in the matter. The procedures for appeals are found in subpart P of this part. Alternatively, at its option, the Indian Tribe has the right to sue pursuant to section 110 of the Act [25 U.S.C. 450m-1] in Federal district court to challenge the Secretary's decision.

### **§ 137.147 Do those portions of the compact, funding agreement, or amendment not in dispute go into effect?**

Yes, subject to section 507(c)(1)(D) of the Act [25 U.S.C. 458aaa-6(c)(1)(D)].

### **§ 137.148 Does appealing the decision of the Secretary prevent entering into the compact, funding agreement, or amendment?**

No, appealing the decision of the Secretary does not prevent entering into the compact, funding agreement, or amendment.

#### BURDEN OF PROOF

### **§ 137.150 What is the burden of proof in an appeal from rejection of a final offer?**

With respect to any appeal, hearing or civil action, the Secretary shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting the final offer.

#### DECISION MAKER

### **§ 137.155 What constitutes a final agency action?**

A final agency action shall consist of a written decision from the Department to the Indian Tribe either:

- (a) By an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or
- (b) By an administrative judge.